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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,681	08/20/2003	Regis W. Haid JR.	PC821.00/4906-014	6452
24112	7590	12/01/2006	EXAMINER	
COATS & BENNETT, PLLC			RAMANA, ANURADHA	
P O BOX 5			ART UNIT	
RALEIGH, NC 27602			PAPER NUMBER	
			3733	

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/644,681

Applicant(s)

HAID ET AL.

Examiner

Anu Ramana

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12, 15-18 and 27-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13, 14, 19-23 and 26 is/are rejected.
- 7) ☒ Claim(s) 24 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/20/03; 3/7/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of the invention of Group I (claims 1-26) and Species 3 (Figure 7), in the reply filed on September 15, 2006, is acknowledged.

Accordingly, claims 1-10, 13-14 and 19-26 have been examined on the merits in this office action. Claims 11-12, 15-18 and 27-48 have been withdrawn from further consideration since they are directed to nonelected inventions/species.

### ***Claim Objections***

Claims 1-7 are objected to because of the following informalities. It appears that these claims are directed to a kit or system. Thus, the use of "device" in the preamble is misleading. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 8-10, 13-14 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, lines 5-7, it is unclear what structure Applicants are claiming by the phrase, "the spacer extending below the body to be positioned between the first and second vertebral members when the body is positioned on an anterior surface of the first and second vertebral members;." Further, it is unclear how this body is different from the body already recited in line 3.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 13-14, 19, 22-23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (US 6,159,214).

Regarding claim 1, Michelson discloses a docking ring 1112 and a mount 1110 sized to attach to the ring 1112 wherein the mount 1110 has a receiving section 1118 for engaging a plurality of instruments. It is noted that the plurality of instruments include distractors 151 and 151' coupled to a mount 158 having fingers 134a and 134b (Figs. 9-11D and 66-72, col. 11, col. 12, col. 13, lines 1-40, col. 22, lines 5-67 and col. 23, lines 1-61).

Regarding claims 22-23 and 26, Michelson discloses a device to prepare an intervertebral space including a milling block or ring having spikes and a properly sized milling bit or trial wherein the milling bit is connected to a shaft 216 with a locking mechanism including a spring (Figs. 16, 27-30 and 36, col. 15, lines 9-67, col. 16, col. 17, lines 10-67 and col. 18, lines 1-4).

Claims 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kulisch et al. (US 5,489,307).

Kulisch et al. disclose a device to prepare first and second vertebral members including: a drill tube or body 92; and a reamer end or spacer 130 with outwardly extending wings 131 that mount to the body and position the spacer within the tube (Fig. 31, col. 7, lines 22-33).

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Claims 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Sand (US 6,113,602).

Sand discloses a device to prepare an intervertebral space including a ring and a trial (Figs. 11-12, col. 7, lines 34-67 and col. 8, lines 1-11). Note that Sand discloses that his device is used with distraction plugs or "trials" as disclosed by Kulisch et al. (US 5,489,307) (col. 5, lines 7-18).

### ***Allowable Subject Matter***

Claims 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR  
November 27, 2006

A handwritten signature in black ink, appearing to read "Anuradha Ramana". The signature is written in a cursive, flowing style.